

**State Board of Education
January 19, 2010
Item H**

Team: Legal Division

Discussion/Update Topic: Harassment Law

Statutory Authority: 16 V.S.A § 565 and DOE Model Harassment Policy (both attached).

Background Information: The DOE Legal Division will provide a brief overview of the Vermont and federal laws pertaining to harassment, and will discuss the DOE’s model harassment policy, and the respective roles of the DOE and the local districts in the related processes.

Purpose of Discussion: The purpose of this discussion is to review this important area of the law for the State Board, and to address any questions and/or concerns the State Board may have regarding related comments made during the “public to be heard” section of its December 2009 meeting.

Cost Implications: Implementation of the harassment law requires a certain amount of staff-related and operations-related expenditures. These expenditures are believed to be proportional to the important goals of the law, and to the student rights which are implicated, and as such, no change in current practice is recommended.

Staff Available: Mark Oettinger, General Counsel; Barbara Crippen, Staff Attorney; and John Harvey, Investigator.

The Vermont Statutes Online

Title 16: Education

Chapter 9: SCHOOL DISTRICTS

16 V.S.A. § 565. Harassment and hazing prevention policies

§ 565. Harassment and hazing prevention policies

(a) It is the policy of the state of Vermont that all Vermont educational institutions provide safe, orderly, civil and positive learning environments. Harassment, hazing and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

(b) Each school board shall develop, adopt, ensure the enforcement of, and make available in the manner described under subdivision 563(1) of this title harassment and hazing prevention policies which shall be at least as stringent as model policies developed by the commissioner. In this section, the definitions of educational institution, organization, pledging, and student shall be the same as those in section 140a of this title.

(1) The harassment prevention policy shall include:

(A) A statement prohibiting harassment of a student.

(B) The definition of harassment pursuant to subdivision 11(a)(26) of this title.

(C) Consequences and appropriate remedial action for staff or students who commit harassment. At all stages of the investigation and determination process, school officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving complaints.

(D) A procedure that directs students and staff how to report violations and file complaints.

(E) A procedure for investigating reports of violations and complaints. The procedure shall provide that, unless special circumstances are present and documented by the school officials, an investigation is initiated no later than one school day from the filing of a complaint and the investigation and determination by school officials are concluded no later than five school days from the filing of the complaint with a person designated to receive complaints under subdivision (c)(1) of this section. All internal reviews of the school's initial determination, including the issuance of a final decision, shall, unless special circumstances are present and documented by the school officials, be completed within 30 days after the review is requested.

(F) A description of how the board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to harassment.

(2) The hazing prevention policy shall include:

(A) A statement that hazing, as defined in subdivision 11(a)(30) of this title, is prohibited.

(B) A procedure that directs students and staff how to report violations and file complaints.

(C) A procedure for investigating reports of violations and complaints.

(D) Circumstances under which hazing may be reported to a law enforcement agency.

(E) Appropriate penalties or sanctions, or both, for organizations which or individuals who engage in hazing, and revocation or suspension of an organization's permission to operate or exist within the institution's purview, if that organization knowingly permits, authorizes, or condones hazing.

(F) A description of how the board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to hazing.

(c) Each school district shall establish rules setting forth procedures for dealing with harassment and hazing of students which include:

(1) Annual designation of two or more people within the institution to receive complaints and a procedure for publicizing those people's availability.

(2) A procedure for publicizing the availability of the Vermont human rights commission and the federal Department of Education's Office of Civil Rights and other appropriate state and federal agencies to receive complaints of harassment.

(3) A statement that acts of retaliation for reporting of harassment or for cooperating in an investigation of harassment is unlawful pursuant to subdivision 4503(a)(5) of Title 9.

(d) Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this section to students, custodial parents or guardians of students, and staff members. Notice to students shall be in age-appropriate language and should include examples of harassment and hazing. At a minimum, this notice shall appear in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for the school. The board shall use its discretion in developing and initiating age-appropriate programs to effectively inform students about the substance of the policy and procedures in order to help prevent harassment, and hazing.

(e) The commissioner shall develop and, from time to time, update model harassment and hazing prevention policies.

(f) Independent review.

(1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the school officials as to whether harassment occurred, or believes that although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem, shall make such request in writing to

the headmaster or superintendent of schools. Upon such request, the superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the commissioner of education and the human rights commission and maintained by the commissioner. Individuals shall be placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.

(2) The independent review shall proceed expeditiously and shall consist of an interview of the student and the relevant school officials and review of written materials involving the complaint maintained by the school or others.

(3) Upon the conclusion of the review, the reviewer shall advise the student and the school officials as to the sufficiency of the school's investigation, its determination, the steps taken by the school to correct any harassment found to have occurred, and any future steps the school should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.

(4) The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records.

(5) The costs of the independent review shall be borne by the independent school or school board.

(6) Nothing in this subsection shall prohibit the school district from requesting an independent review at any stage of the process.

(7) Evidence of conduct or statements made in connection with an independent review shall not be admissible in any court proceeding. This subdivision shall not require exclusion of any evidence otherwise obtainable from independent sources merely because it is presented in the course of an independent review.

(8) The commissioner may adopt rules implementing this subsection. (Added 1993, No. 162 (Adj. Sess.), § 4; amended 1999, No. 120 (Adj. Sess.), § 6; 2001, No. 8, § 6; 2003, No. 91 (Adj. Sess.), § 4.)
